

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.)

Docket No. ER12-____-000

**REQUEST FOR LIMITED TARIFF WAIVER AND
REQUEST FOR EXPEDITED ACTION OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

The New York Independent System Operator, Inc. (“NYISO”) hereby respectfully requests that the Commission grant a limited waiver of Sections 5.12.11.1.1 and 5.12.11.1.2 of the Market Administration and Control Area Services Tariff (“Services Tariff”) to allow the NYISO to maintain the registration of certain Special Case Resources (“SCRs”)¹ in the Installed Capacity (“ICAP”) Market during the Summer 2011 Capability Period, and treat the resources as if they had been properly registered, making them subject to all provisions applicable to such resources, including provisions on shortfalls and deficiency penalties. As further explained below, waiver should be granted as it will avoid the deregistration of 199 SCRs that were incorrectly enrolled as new SCRs by their Responsible Interface Parties (“RIPs”) during the Summer 2011 Capability Period, and one SCR that was incorrectly enrolled as new during the Winter 2011/2012 Capability Period.² Granting the requested waiver will allow the NYISO to treat these specific incorrectly registered SCRs as if they had been properly registered. Thus, it would avoid the recalculation of Market Participant performance factors for the Summer 2012 Capability Period and would permit the RIPs to retain compensation for actual performance.

¹ Terms not defined herein have the meaning set forth in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”), or if not defined therein, the meaning set forth in the NYISO’s Installed Capacity Manual.

² The NYISO has identified and notified the 13 RIPs that are the subject of this request, that it will be submitting this waiver request with respect to the specific SCRs each RIP incorrectly registered in the prior identified Capability Periods. The NYISO will also individually serve this tariff waiver on each of the 13 RIPs, upon its filing with the Commission.

The NYISO also respectfully requests expedited Commission action by April 4, 2012, in order to provide certainty with respect to whether waiver will be granted or, in the event waiver is not granted, in order to allow the NYISO to implement necessary corrections prior to the Summer 2012 Capability Period. In order to maximize the amount of time before the NYISO would be required to take action if a Commission order granting this waiver is not received, the NYISO will be notifying stakeholders that the end of the enrollment period for May 2012, the first month of the Summer 2012 Capability Period, will be extended by three business days, from April 6, 2012 to April 11, 2012.³

I. COMMUNICATIONS

Copies of correspondence concerning this filing should be served on:

Robert E. Fernandez, General Counsel
Ray Stalter, Director of Regulatory Affairs
*David Allen, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
rfernandez@nyiso.com
rstalter@nyiso.com
dallen@nyiso.com

Ted J. Murphy
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037-1701
Tel: (202) 955-1500
Fax: (202) 778-2201
tmurphy@hunton.com

*Vanessa A. Colón
Hunton & Williams LLP
Bank of America Center
Suite 4200
700 Louisiana Street
Houston, TX 77002
Tel: (713) 229-5700
Fax: (713) 229-5782
vcolon@hunton.com

* Persons designated for service.

³ The date of the close of the Enrollment Period on the ICAP Event Calendar will be changed.

II. BACKGROUND

On February 17, 2011, the NYISO submitted proposed tariff changes to Section 5 of the Services Tariff to enhance the rules that allow for the participation of SCRs in the NYISO's ICAP market ("February Filing").⁴ The NYISO's tariff amendments sought to provide greater clarity for the measurement and performance of SCRs, and the RIPS aggregating SCRs, by applying new performance factor calculations to individual SCRs and RIPS, and performance deficiency payments applicable to RIPS. Most relevant for the purposes of this request, the proposed tariff changes implemented a new methodology to determine the amount of Load reduction available from SCRs. The NYISO replaced its Average Peak Monthly Demand methodology for calculating SCR baselines with the Average Coincident Load ("ACL") methodology. The tariff modifications better aligned the participation and performance of SCRs with the operational expectations of the NYISO during an ICAP/SCR event called for reliability purposes by obtaining better estimates of the demand reduction capacity (and Installed Capacity) of SCRs.

On April 11, 2011,⁵ the Commission issued an order accepting the February Filing and directing the NYISO to incorporate in the Services Tariff the methodology and procedures to calculate the ACL and the Provisional Average Coincident Load ("Provisional ACL") for SCRs. On May 2, 2011, the NYISO submitted a compliance filing adding the ACL methodology and procedures to Services Tariff Sections 5.12.11.1.1 and 5.12.11.1.2. In relevant part, Section 5.12.11.1.1 provides that:

⁴ Proposed Tariff Revisions for the Measurement and Performance of Special Case Resources, Aggregations and Responsible Interface Parties at 7, Docket No. ER11-2906-000 (filed February 17, 2011) ("February Filing").

⁵ *New York Independent System Operator, Inc.*, 135 FERC ¶ 61,020 (2011).

The ISO must receive from the Responsible Interface Party that registers a Special Case Resource, the calculation of Average Coincident Load as provided below and in accordance with ISO Procedures. The Responsible Interface Party shall compute the Average Coincident Load using the SCR Load Zone Peak Hours for each Special Case Resource. The only exception to this requirement is if (i) the Special Case Resource has not previously been enrolled with the ISO and (ii) never had interval metering Load data for each month in the Prior Equivalent Capability Period needed to compute the Special Case Resource's Average Coincident Load, in which instance the ISO must receive a Provisional Average Coincident Load as provided in Section 5.12.11.1.2 of this Services Tariff from the Responsible Interface Party, computed and received in accordance with the ISO Procedures; provided, however, a Provisional Average Coincident Load shall (a) be only for a maximum of three (3) consecutive Capability Periods, and (b) apply to the resource for the entire Capability Period for which the value is established regardless of whether the resource is later enrolled by a Responsible Interface Party other than the one which reported the Provisional Average Coincident Load to the ISO for the period.

Further, Section 5.12.11.1.2 requires RIPs to provide the ACL for any SCRs registered using Provisional ACL following the Capability Period for which such SCR was enrolled. Section 5.12.11.1.2 provides that the NYISO "will compare the Provisional Average Coincident Load to the ACL ... to determine, after applying the applicable performance factor, whether the UCAP of the Special Case Resource has been oversold." If the SCR was oversold, that will be deemed a shortfall; further where a RIP fails to provide the data to compute the ACL of the SCR enrolled with a Provisional ACL by a deadline, the RIP may be subject to deficiency penalties.

The Commission accepted the NYISO's compliance filing on May 31, 2011.⁶ The tariff provisions with respect to ACL became effective on April 11, 2011. Beginning with the Summer 2011 Capability Period, RIPs were required to register SCRs utilizing either the SCR's ACL (actual data) or if the SCR had never previously been enrolled with the NYISO, a Provisional ACL. The Provisional ACL is the value inserted by the RIP at the time it enrolls the SCR, and is the RIP's estimate of the SCR ACL for the Capability Period. Pursuant to Sections

⁶ *New York Independent System Operator, Inc.*, Letter Order, Docket No. ER11-2906-001 (issued May 31, 2011).

5.12.11.1.1 and 5.12.11.1.2, following the Capability Period in which an SCR with a Provisional ACL was enrolled, the RIP registering the new SCR (*i.e.*, each SCR that had never been previously enrolled with the NYISO) should have provided the NYISO with information necessary to verify such SCR's Provisional ACL. For SCRs that had been previously registered with the NYISO, the RIP was required to provide the ACL calculated using the SCR's Load Zone Peak Hours, as described in the Services Tariff.

As explained in the NYISO's February Filing, for the Summer 2011 Capability Period interim measures were put in place, with respect to the calculation of ACL, because necessary software changes could not be implemented until late September 2011. The February Filing requested an April 11, 2011 effective date, prior to the implementation of the corresponding Demand Response Information System ("DRIS") changes, because stakeholders "strongly expressed their desire to have these provisions implemented for the Summer 2011 Capability Period and urged the NYISO to request" expedited treatment.⁷ The NYISO implemented, in its DRIS, software changes to reflect the modifications to the ICAP/SCR program accepted by the Commission (*i.e.*, changes allowing DRIS to address resource-specific adjustments to each applicable SCR's reported coincident Load) in the Fall of 2011 in time for the Winter 2011/2012 Capability Period. The DRIS software is now able to ensure that only SCRs that had never been previously enrolled with the NYISO could be enrolled using the Provisional ACL methodology.

Many RIPs successfully registered SCRs using ACL and Provisional ACL, as appropriate, during the Summer 2011 Capability Period. However, 13 RIPs registered a total of 199 SCRs with a Provisional ACL but those 199 SCRs had been previously enrolled for prior

⁷ February Filing at 7; *see also New York Independent System Operator, Inc.*, 135 FERC ¶ 61,020 at P 13 (2011) (noting that Market Participants filed protests objecting to any proposed delay in the implementation of the tariff revisions and urging the Commission to issue an order accepting the modifications effective on or before April 11, 2011).

Capability Periods. Accordingly, the use of the Provisional ACL, instead of ACL was incorrect. Those SCRs participated in the Summer 2011 Capability Period, including performing during two ICAP/SCR events called for reliability reasons. The one SCR that improperly enrolled with a Provisional ACL for the Winter 2011/2012 Capability Period even though it was not new, was only able to do so because it had temporarily been isolated from the other enrollments at the time one aspect of the software was deployed. When the software was deployed, the NYISO reviewed all SCRs enrolled for the Winter 2011/2012 Capability Period before and after the deployment. However, due to the fact that the one SCR was isolated in order to evaluate it under other aspects of the rules, the NYISO inadvertently did not identify it when it used the new software to examine SCRs that were registered with a Provisional ACL prior to the deployment.

On March 14, 2012, while reviewing SCR registrations prior to the upcoming deadlines for the Summer 2012 Capability Period, the NYISO became aware of the issue of these incorrectly registered SCRs.

III. REQUEST FOR WAIVER

The Commission evaluates a number of issues in determining whether to authorize a tariff waiver to alleviate the effects of an error. These factors are whether: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences, such as harming third parties.⁸ The NYISO requests this one-time waiver to allow it to keep in the 200 SCRs that were incorrectly registered and treat them as if they were correctly registered, and thus subject to all tariff provisions applicable to SCRs registered with Provisional ACLs — 199 in the 2011 Summer Capability Period, and one in the Winter 2011/2012 Capability Period. Absent this

⁸ See, e.g., *PJM Interconnection, LLC*, 137 FERC ¶61,184 at P 13 (2011); *New York Independent System Operator, Inc.*, 136 FERC ¶ 61,193 at P 67 (2011).

waiver, the NYISO, pursuant to Section 5.12.11.1.1, which provides that a previously registered SCR cannot be enrolled using the Provisional ACL, will have to modify the results of these prior Capability Periods, and the performance factors, based on the deregistration of these resources, as they were improperly enrolled and thus should not have been able to participate in the respective Capability Period. In support of this request, the NYISO asks that the Commission consider the following:

A. A Concrete Problem Exists

For the Summer 2011 Capability Period, 13 RIPs registered 199 SCRs, and for the Winter 2011/2012 Capability Period, one RIP registered one SCR, that were not new to the NYISO's ICAP market, with a Provisional ACL, which is only applicable to new SCRs. If the NYISO does not obtain waiver of the relevant tariff provisions, it will have to make changes to Summer 2011 and Winter 2011/2012 Capability Period data to reflect the fact that the erroneously enrolled SCRs would have not been properly registered for the respective Capability Period, and thus would not have been able to participate in the ICAP market during that time. In addition, if the deregistration of an SCR for that period would result in a RIP having sold more capacity than it had registered, the NYISO may have to impose a penalty on the RIP.

In order to undo these SCRs' participation for the applicable Capability Period, the NYISO would have to, among other things, adjust the performance factors for the 200 SCRs, and their corresponding RIPs. This adjustment to the performance factor is a complex process. While the NYISO believes that removal of the 200 SCRs would not have a large impact on the market, both incorrectly enrolled SCRs and any new SCRs entering the market with any of the RIPs in question or any new Market Participants that are currently entering the market will be affected by the recalculation. Correcting the enrollment error will also require coding, testing,

and implementation of necessary modifications to the NYISO's DRIS software prior to the end of the May 2012 Enrollment period on April 11, 2012. The requested limited tariff waiver will allow the NYISO to proceed with the Summer 2012 Capability Period without having to take the actions necessary to deregister the erroneously enrolled resources from the prior Capability Periods, and perform corresponding recalculations of performance factors for the Summer 2012 Capability Period.

Additionally, absent this limited waiver to allow the NYISO to treat these 200 SCRs as if they were eligible to be registered using a Provisional ACL, it would be unclear whether the NYISO would be able to impose a shortfall charge or deficiency payments pursuant to Section 5.12.11.1.2 if the NYISO determines that the performance of any of these SCRs was below the Provisional ACL submitted for it.

The NYISO considers the capacity supplied by SCRs to be important to system planning and operations. Granting this waiver will prevent any negative impact to SCR participation that deregistration due to this type of inadvertent error may create. Requiring deregistration of these 200 SCRs at this late date would also contravene the purpose of the new tariff provisions which was to encourage and ease SCR participation in the NYISO ICAP Market.

B. The Underlying Errors Were Made in Good Faith

Until March 14, 2012, the NYISO was unaware that any issue existed with respect to SCR registration of existing resources by RIPs using a Provisional ACL. Despite providing Market Participants with training and information⁹ regarding the procedures to use when registering SCRs for the Summer 2011 and future Capability Periods, a small portion of RIPs

⁹ The NYISO not only discussed the changes during the stakeholder process prior to the filing of the tariff modifications, but also provided training for Market Participants explaining the new processes proposed in the February filing. See March 2011 training materials, *available at* <http://www.nyiso.com/public/markets_operations/market_data/demand_response/index.jsp>.

inadvertently did not follow the applicable procedures. The NYISO only recently discovered the issue and is promptly acting to seek waiver of the relevant tariff provisions, or in the event waiver is denied, obtain timely Commission guidance and implement necessary corrections.

Additionally, it appears that the Market Participants' registration errors described herein were inadvertent. Despite the training and information provided by the NYISO with respect to the changes for SCR registration, the incorrect enrollment of these 200 SCRs occurred. At the urging of Market Participants, the tariff modifications were placed into effect prior to the modifications to the DRIS software that would have prevented the error. This brief transition period allowed RIPs to inadvertently register existing SCRs as new, utilizing a Provisional ACL, in contravention of the Services Tariff. Additionally, Section 5.12.11.1.2 of the Services Tariff contains penalties applicable to SCRs registered with Provisional ACLs that serve as a disincentive for Market Participants to use a Provisional ACL as a way to overstate the capacity of their registered SCRs. Thus, the NYISO has no reason to believe that the incorrect enrollment of these resources was intentional, given the shortfalls and penalties to which RIPs registering SCRs with Provisional ACL may be subject.

C. The Waiver Request Is of Limited Scope

The NYISO is seeking waiver with respect to the 199 SCRs and the 13 RIPs that committed the error for the Summer 2011 Capability Period, and the one RIP and one SCR that committed the error for the Winter 2011/2012 Capability Period, so that they can remain registered for those periods. The 199 SCRs and 13 RIPs are a small number of all of the SCRs and RIPs that were resources in the ICAP market during the Summer 2011 Capability Period, which as of July 2011 included 5390 SCRs and 35 RIPs.

Additionally, to further limit the scope of the waiver, the NYISO respectfully requests that any order granting this request explicitly provide that the waiver is limited to the specific and unique facts presented here and does not constitute precedent allowing any Market Participant to avoid these or any other terms and conditions set forth in the Services Tariff. Strict compliance with the NYISO's Services Tariff and ISO Procedures is essential to the orderly administration of the NYISO's ICAP Market.

D. The Waiver Will Not Have Any Undesirable Consequences

As of Fall 2011, the modifications to DRIS to recognize the new tariff provisions that have been implemented. These modifications prevent the enrollment of an existing SCR as a new SCR. Thus, the type of error that precipitated this waiver request can no longer occur; the software prevents RIPS from making the same SCR enrollment error in a Capability Period other than Summer 2011, and the single instance for the Winter 2011/2012 Capability Period due to the status of the resource during the unique phase of the software deployment. Granting this limited waiver will therefore not create a situation where further errors of this type would undermine the NYISO's processes and procedures for the registration of SCRs by RIPS in the ICAP market.

Additionally, the NYISO is seeking this tariff waiver to prevent undesirable consequences in the upcoming Summer 2012 Capability Period arising from having to deregister the 199 incorrectly enrolled resources from the Summer 2011, and the one from the Winter 2011/2012, Capability Period. Since the SCRs were not correctly registered, they were not properly offered during the respective Capability Period. However, deregistration is not a desirable outcome in this situation, as the error has been revealed after the fact, which does not give the affected RIPS and SCRs time to correct the error. Further, these resources did

participate in the ICAP market and were even called on for, and responded to, ICAP/SCR reliability related events during the Summer 2011 Capability Period. Also, the NYISO has not detected any difference in the response rate between these SCRs and the other SCRs that participated during the affected Capability Periods. Absent a waiver, the benefits that the NYISO received from the participation will be offset by the measures that will have to be taken to deregister them, thus not granting the waiver will have undesirable market impacts, albeit limited in scope to the SCRs that were affected by this error, which includes a maximum of 48.4 MWs out of a total 2,209.5 MWs, or 2.2 percent, of the SCR MWs in the Summer 2011 Capability Period.

IV. REQUEST FOR EXPEDITED ACTION

The NYISO requests that the Commission issue an order on this limited waiver request by April 4, 2012. That date is requested so that in the event that the Commission declines this request, the NYISO would have adequate time to adjust the performance factors affected by the incorrect registration of 200 SCRs, which also will require revising Market Participant performance factors and the SCR Program performance factors. Other actions the NYISO would have to promptly take if the Commission finds the waiver is not warranted include actions to code, test, and make necessary modifications to its DRIS software in order to invalidate the enrollment of the 199 SCRs from the Summer 2011, and one SCR from the Winter 2011/2012, Capability Period.

In order to accommodate its request for expedited action, the NYISO also respectfully requests that the Commission shorten the comment period for responses to this waiver request in order to permit expeditious Commission action. Good cause exists for the Commission to act on an expedited basis because, until the Commission acts upon this waiver

request the NYISO and its Market Participants will not have certainty regarding the actual performance factors for SCRs to be applied during the Summer 2012 Capability Period. Therefore, the NYISO submits that the circumstances warrant expedited Commission review of this matter.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the NYISO respectfully requests that the Commission grant the limited waiver requested herein by April 4, 2012.

Respectfully submitted,

/s/ Vanessa A. Colón

Vanessa A. Colón
Counsel to the
New York Independent System Operator, Inc.